

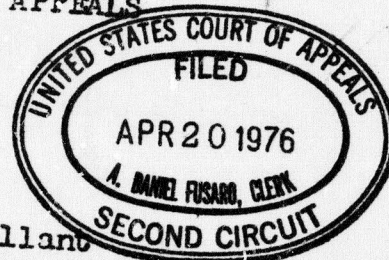
***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
BRIEF &
APPENDIX**

76-7106

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT



WARDELL HUNTER

Plaintiff-Appellant

CIVIL NO. 76-7106

vs.

RAYMOND R. NIEMER, JUDGE, FAMILY COURT, AND
STATE OF NEW YORK

Defendants-Appellees

B
P/S

ON APPEAL FROM THE JUDGMENT OF THE UNITED STATES
DISTRICT COURT FOR THE WESTERN DISTRICT OF NEW YORK

BRIEF FOR THE PLAINTIFF-Appellant
Appendix

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IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

NO. 76-7106

WARDELL HUNTER

Plaintiff-Appellant

vs.

RAYMOND R. NIEMER, JUDGE, FAMILY COURT, AND
STATE OF NEW YORK

Defendants-Appellees

ON APPEAL FROM THE JUDGMENT OF THE UNITED STATES
DISTRICT COURT FOR THE WESTERN DISTRICT OF NEW YORK

STATEMENT OF THE ISSUES PRESENTED

1. That Judge John T. Curtin, errored in dismissing Plaintiff's lawsuit, by ruling the "Eleventh Amendment Prohibits a suit against a state by one of its citizens without its consent", and dismiss the lawsuit against Defendant State of New York for lack of jurisdiction.

2. That Judge John T. Curtin, errored in dismissing this lawsuit against Judge Niemer, stating Judge Niemer has not moved to dismiss this suit is so obviously without merit that it is dismissed against him also.

STATEMENT OF THE CASE

That Plaintiff commenced this lawsuit, because Judge Niemer and State of New York, deprived me a right to a trial in my district, and Judge Niemer convicted me, and place me in confinement, and I am still on probatation to this date, and cannot obtain a trial in the district, even though I was supporting my family.

That plaintiff was denied the right to a Jury trial, rights provided by the 5th and 14th Amendment to United States Constitution.

2. That United States Supreme Court held in SARAH SCHEUER vs. RHODES 42 L. W. 4543,

" HOWEVER, SINCE EX PARTE YOUNG 209 U. S. 123 (1907) it has been settled that the Eleventh Amendment provides no shield for a state official confronted by a claim that he had deprived another of a federal right under the color of state law. Ex Parte Young teaches that when a state officer acts under a state law in a manner violative of the Federal Constitution, he comes into conflict with the superior authority of that Constitution and he is in that case stripped of his official or representative character and is subject in his person to the consequences of his individual conduct."

The Court held in, In re Cotton Domestic Relations Court of New York 30 N.Y. 2d 421 (1941)

" A person charged with an offense must be tried within the limits of the locale where the offense was committed, in the county, borough, city or state, so that he may be tried by his peers within the boundaries where the offense was committed."

The Court held in United States vs. Florence 456 F. 2d 46 (1972), at page 49 means Political District Williams vs. Florida 399 U. S. 78 (1970), Duncan vs. Louisiana 391 U. S. 145 (1968).

The Court held that Judges can be sued for their illegal acts. Ezell Littleton, vs Berbling 468 F. 2d 389 (1972).

3. Defendant Judge Niemer, failed to answer or to move against the complaint, and was in default. Judge Curtin, should have entered a Default Judgment.

CONCLUSION

For the reasons stated, the judgment of the District

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Court should be reversed and ~~Default~~ Judgment be entered against defendant Judge Niemer, and for further relieve as the Court may determine.

Respectfully submitted,

Wardell Hunter
WARDELL HUNTER
401 Northampton
Buffalo, New York 14208

APPENDIX

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

WARDELL HUMER
401 Northampton Street
Buffalo, New York 14208

Plaintiff

vs.

Civ-74-407

RAYMOND R. NIEMER
Judge, Family Court
County Hall
Buffalo, New York
(And)

STATE OF NEW YORK
State Office Building
Court & Franklin Street
Buffalo, New York 14202

Defendants

APPEARANCES. Plaintiff Pro Se.

LOUIS J. LEFKOWITZ, ESQ., Attorney General
of the State of New York (Michael F.
Colligan, ESQ., of Counsel), Albany, New
York, for Defendants.

Some ten years before this complaint was filed,
plaintiff was allegedly sentenced to a six-month jail
term for non-support by Judge Raymond R. Niemer, and
apparently has been under a court order to support his
wife and family ever since. The perceived injustice
of all

this prompted plaintiff to bring this confused and murky pro se complaint against Judge Niemex and the State of New York. It appears from the complaint that the following charges are Made:

(1) That the requirement of the New York State Constitution, Article VI, #20, that all New York judges have a legal education is a poll tax in violation of the fourteenth amendment and is also violative of the 1965 Voting Rights Act, 42 U.S.C. # 1973 et seq.

(2) That the State of New York conspired to deny plaintiff his fifth amendment due process rights by having at-large elections for family court, thus diluting black voting strength.

(3) That lawyers seeking judicial positions are given unfair advantage by New York law because allegedly they can file nominating petitions with all parties, while a layman must file with the party with which he is registered.

(4) That Judge Niemex violated plaintiff's civil rights by confining him to prison for six months and placing him on probation.

Plaintiff seeks the convening of a three-judge court, declaratory and injunctive relief, and money damages. He claims jurisdiction in this court under the Civil Rights Act of 1964 (42 U.S.C. #1971): the voting Rights Act of 1965 (42 U.S.C. #1973 et seq):

CERTIFICATE OF SERVICE

I CERTIFY THAT TWO COPIES OF THIS BRIEF WITH APPENDIX
WAS SERVED UPON , JAMES L. MCGAVERN, COUNTY, ATTORNEY,
ERIE COUNTY, 25 DELAWARE AVE., BUFFALO, N. Y, AND
DOUGLAS S. CREAM, ASSISTANT ATTORNEY GENERAL, STATE
OF NEW YORK, 65 COURT STREET, BUFFALO, NEW YORK ,
BY LEAVING TWO COPIES AT EACH OF THEIR OFFICE,

ON [REDACTED] 1976.

April 16

Wardell Hunter
WARDELL HUNTER

42 U.S.C. #1981, 1982, 1983, 1985, 28 U.S.C. #1343;
 28 U.S.C. #2201; United States Constitution Article III,
 #1, and the fourth, fifth, sixth, fourteenth, fifteenth,
 twenty-second and twenty-fourth amendments to the United
 States Constitution. Before the court at this time is
 the State of New York's motion to dismiss the complaint
 for lack of jurisdiction and for failure to state a
 claim upon which relief can be granted.

The eleventh amendment prohibits a suit against
 a state by one of its citizens without its consent.
Employees of the Department of Public Health and Welfare
of Missouri v. Department of Public Health and Welfare of
Missouri, 411 U. S. 279 (1973). Therefore, the suits is
 dismissed against the State for lack of jurisdiction.

Although Judge Niemer has not moved to dismiss,
 this suit is so obviously without merit that it is dis-
 missed against him also.

So ordered.

/s/ JOHN T. CURTIN
pt/ JOHN T. CURTIN
 United States District Judge

DATED: February 3. 1976